REMARKS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended in the recent telephonic discussions of this case, held with Applicant's representative. The claims presented herein are consistent with those discussions. Accordingly, entry of this amendment and reconsideration of the pending claims is respectfully requested.

The Office Action mailed July 18, 2007, considered and rejected claims 1, 2, 5, 7, 8, 22-25, 32 and 33. Claims 1, 2, 5, 7-8, 22-25, 32-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ward* (U.S. Patent No. 6,756,997) in view of *Marsh* (U.S. Patent No. 6,208,799) and *Bertis* (U.S. Patent No. 6,564,005), and further in view of *Beach* (U.S. Publication No. 2002/0191954).[1]

By this paper, claims 1 and 22 have been amended, and no claims have been added or cancelled. Accordingly, following this paper, claims 1, 2, 5, 7, 8, 22-25, 32 and 33 are pending, of which claims 1 and 22 are the only independent claims at issue.

As reflected above, Applicant's claims are generally directed to managing conflicting recording schedules for broadcast recordings. In particular, the claims of the present invention allow a conflict in a broadcast schedule that exists at the time the user selects recording to be immediately stored and to persist such that the conflict can be automatically resolved, without a user or system immediately attempting to resolve the conflict or re-program the scheduled recordings. As reflected in claim 1, for example, an exemplary method according to the present invention includes receiving user input from a particular user selecting a first program to be recorded. Thereafter, the same user selects a second program for recording. At the time the user input selecting the second program for recording is received, it is determined that a conflict exists between the first and second programs. Despite the conflict, the system abstains from attempting to resolve the conflict, and instead stores the conflicting information in a recording list indicating that the particular user has selected both the first and second programs for recording. The stored information thus persists a conflict that existed at the time the second program was selected. The system then selects the first program and programs the recording apparatus to schedule recording of the first program at the first broadcast time. Subsequent to

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

such programming, the recording apparatus continues to store the information specifying that the user has selected conflicting programs, without requiring a user to resolve the conflict. In response to a subsequent event such as detecting that a new tuner has been added or that a start/stop time of the first or second program has changed, the recording apparatus is automatically programmed to schedule recording of the second program.[2]

While *Ward*, *Marsh*, *Berstis* and *Beach* are each generally directed to recording programming and resolving conflicts, they fail, whether individually or in combination, to disclose or suggest Applicant's invention as claimed above. For example, among other things, the cited references fail to teach or disclose a method or a system in which at the time a particular user enters input selecting conflicting first and second programs, and immediately thereafter, the system abstains from resolving the conflict and instead conflicting scheduling information is stored in the recording list, despite the existence of the conflict, as recited in combination with the other claim elements.

For instance *Ward* discloses an EPG in which windows are provided to provide information to the user. (Col. 10, ll. 50-60). Using the EPG windows, a user can use a record function to select to record a future-scheduled program and have it recorded in the Record List. (Col. 11, ll. 48-60). Multiple record commands may be provided by the user and, in some cases, such commands can conflict by having overlapping dates, times and durations. (Col. 12, ll. 37-49). When the record function of the EPG receives viewer instructions to record a particular program, it compares the newly received instruction to other instructions in the Record List. (Col. 12, ll. 41-45). When the received second program is determined to have an overlap with the already listed program, the EPG generates a message that is presented to the user and which describes the conflict. (Col. 12, ll. 42-49). The user is then required to revise or discard the record instruction. Indeed, "the EPT will prevent entry of conflicting instructions into the Record List." (Col. 12, ll. 52-55). Thus, the second record command is stored in the Record List only after the conflict is resolved.[3]

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[2] Independent claim 22 recites a recording system and generally corresponds to the method of claim 1.

[3] In another embodiment, at the time the second command is received, *Ward* discloses that the EPG can detect a conflict between a "one occurrence" recording instruction and a "regularly recorded" recording instruction and either suggest to the viewer to select the "one occurrence" program, or automatically decide to override any conflicting "regularly record" instruction. (Col. 12, ll. 55-65). In either case, however, the instruction for the "regularly record" instruction is not recorded as only the "one occurrence" is stored in the Record List and the conflict is resolved.

Accordingly, *Ward* describes an EPG which identifies multiple programs and a Record List which identifies which of those program are scheduled to be recorded. In the system, when a user selects a program, a check is run against other programs in the Record List and when a conflict is found, the system immediately resolves the conflict by storing the record command of only one of the programs is stored in the Record List. Thus, in contrast to the claimed invention, *Ward* describes that when a user selects a program for recording that has a conflict existing at the time of the user input, the conflict <u>must</u> be immediately resolved and eliminated. Notably, this system of *Ward* which immediately resolves conflicts is in direct contrast with the claimed invention in which the system specifically abstains from resolving conflicts at the time a record command of a conflicting program is received.

Applicant respectfully submits that *Marsh*, *Berstis* and *Beach* also fail to remedy this deficiency of *Ward*. For example, *Marsh* generally discloses a set-top VCR recording system which allows automatic adjustment of recording instructions upon the occurrence of changes to a program's recording schedule. In particular, a record request can be received for a particular program which has a particular date, time and duration. (Col. 7, ll. 18-20). When the request is received, and <u>before it is stored in one of the systems record-timers</u>, the request must be investigated for conflicts. (Col. 7, ll. 20-22). A conflict may exist because all of the record-timers have existing program record requests or because there is a day/time conflict. (Col. 7, ll. 24-39). In the case of a day/time conflict, an alert is sent to the user's TV screen where the user cancels one of the conflicting requests. (Col. 7, ll. 38-44). It is only when no conflict exists that the record request is stored in the record timer. (Col. 7, ll. 44-48). Thus, *Marsh* also discloses a system in which, at the time the user requests a future program be recorded, the system immediately resolves conflicts such that only non-conflicting requests are stored in the VCR. Thus, in contrast to the present invention, in which conflicts existing at the time the user input is received are not resolved and are stored in the system, *Marsh* discloses only that conflicts existing at the time of the user input are immediately resolved before the request is stored, and that conflicting requests can be stored only when the conflict is created by subsequent changes to the programming schedule, such that the conflict did not exist at the time of the user request.

In a similar manner, *Berstis* discloses a system in which a multi-user video hard disk recorder is used to store programming content for a variety of users on the system and resolves conflicts before the record requests are stored. In particular, *Berstis* discloses a system in which

a parent or other "master user" adds and manages multiple user accounts corresponding to different persons who will use a particular broadcast receiver. (Col. 6, ll. 54-65; Col. 7, ll. 11-22, 43-58). Users which then have set-up accounts can record programming according to the security measures put in place by the master user. (Col. 7, ll. 46-58). To record a program, a user enters data regarding the particular program desired to be recorded. (Col. 8, ll. 19-25).

Upon entering such recording information, the system checks the user's choices against the security restrictions. (Col. 8, ll. 30-35). If the user's selected program does not violate any restrictions, the system then also checks to ensure that the user's request does not conflict with another user's request for the same time period. In other words, "a user can not request that a television program be recorded for him at a particular time on a particular channel if another user has already requested that a different television program be recorded at the same time on a different channel." (Col. 8, ll. 35-42). Only if such a check reveals no conflicts is the program information saved in the user's program schedule. (Col. 8, ll. 49-53). Thus, similar to the disclosures in *Ward* and *Marsh*, *Berstis* also discloses that conflicting record requests are immediately resolved and that each request is stored only if a conflict is resolved or does not exist. Moreover, the conflicts resolved in *Berstis* are created by two different users, rather than the same user as recited in the above claims in combination with the other claim elements. (Col. 9, ll. 9-14; Fig. 10)

The *Beach* references provides no further help for the deficiencies of the other cited references. In particular, *Beach* also discloses that conflicting record requests of a user are immediately resolved. Specifically, as recordings are scheduled, they are placed in a list of recordings, ordered by the record time. (¶ 165). When entered into the list, a program is checked for conflicts and, only after no conflicts are found, scheduled for recording. (¶¶ 165, 166).

More particularly, conflicts in the *Beach* system are to be resolved "as early as possible". (¶ 169). This is performed by receiving an explicit selection from the user identifying a program to be recorded. (*Id.*). The conflict resolution system is then "immediately" applied to schedule the recording and resolve the conflicts that arise. (*Id.*). This conflict resolution can also include presenting a viewer with an option to cancel each program previously scheduled and which conflicts with the more recently scheduled program. (¶ 168). The viewer may decide to cancel the prior recording or the later program, such that "nothing new will be recorded." (¶ 168).

Thus, like *Ward, Marsh,* and *Berstis*, the *Beach* reference expressly teaches and suggests that a conflict is determined upon selection of a program and is immediately resolved. Accordingly, one of skill in the art would not be motivated to modify the references to arrive at the claimed invention, in which the system abstains from resolving conflicts upon selection of the second program, inasmuch as the only way to do so is to entirely disregard the express teachings and suggestions of the cited references.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

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Respectfully submitted,

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